DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 6635-97
13 April 1999

[redacted]

Dear [redacted]

This is in reference to your request for further consideration of your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 April 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by a designee of the Specialty Leader for Orthopedic Surgery dated 22 January 1999, a copy of which is attached, and the information submitted in response thereto by you and your counsel.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. It noted that in order for you to establish your entitlement to disability separation or retirement from the Marine Corps, you must demonstrate that you were unfit for duty because of a disability which was incurred in or aggravated by your service. You were not found unfit by reason of physical disability; rather, you were administratively discharged from because of your failure to meet the minimum physical standards for enlistment due to a back condition you concealed during your pre-enlistment processing. The Board concluded that although you had a normal pre-enlistment clinical examination, it is unlikely you would have been found physically qualified for enlistment had you disclosed your lengthy history of back pain. Notwithstanding the minor bruising and spasm noted in your health record after you began military training, the Board was not persuaded that you suffered any significant trauma to your back during your enlistment, or that your preexisting condition was permanently aggravated by your brief period service.

The Board noted that SECNAVINST 1850.4B, of 5 September 1987, was not in effect during your enlistment. The version of Disability Evaluation Manuals in effect at the time in question contained provisions similar to those cited in your brief, but they do not provide a basis for granting your request. As indicated above, the results of your pre-enlistment physical examination are of limited value because of your failure to accurately disclose pertinent facts of your medical history, and the absence of credible evidence of service aggravation of your preexisting condition.

The Board did not accept your contention that the evidence is clear and convincing that you did not have spondylolisthesis prior to enlisting. In this regard it noted that the x-rays taken on 11 February 1982 were read as being within normal limits by the general medical officer who reviewed them. The entry "trauma to L-S joint" on the x-ray request form dated 11 February 1982 refers to the basis for requesting examination, rather than a diagnosis. The form does not contain a post-x-ray diagnosis, and there is no indication that the x-rays were reviewed by a qualified radiologist. As your record contains no other x-ray request forms or reports, it is likely that the diagnosis of spondylolisthesis made by an orthopedic specialist on 22 March 1982 was based on the x-rays taken on 11 February 1982, and that the general medical officer was mistaken when he classified them as being within normal limits. If your version of the facts were correct, the result would be an anomalous situation in which you sustained substantial trauma to your back on 11 February 1982, which had not produced as spondylolisthesis as of 12 February 1982, and that there was delayed onset of that condition at some time between 12 February and 22 March 1982, without further significant trauma to your back. The naked assertions of your medical expert that "...it is as likely as not that this patient developed this Grade I spondylolisthesis during his service time", and that your condition "was at least aggravated in service" were not considered probative of your contentions of error or injustice. It was clear to the Board that you had a preexisting condition, and that you suffered nothing more than an acute exacerbation of that problem during your enlistment.

The Board rejected your contention to the effect that you agreed to be discharged because a Navy physician told you that "...they were tired of fooling with" you, and would guarantee that you would receive a less than honorable discharge if you didn't agree to be discharged, because the contention is not substantiated, and the Board did not consider it to be credible.

In view of the foregoing, the Board adhered to its previous decision to deny your application denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

22 Jan 99

From: LCDR S. W. Helmers, Orthopaedic Surgery Department, Naval Hospital, HP01 Boone, Road, Bremerton, WA 98312
To: Chairman, Board for Corrections of Naval Records, Washington, D.C. 20370-5100
Via: (1) Orthopaedic Specialty Advisor

Subj: APPLICATION FOR CORRECTION OF RECORDS ICO OF FORMER [redacted]

Ref: (a) 10 U.S.C. 1552

Encl: (1) BCNR ltr JRE:jdh DN: 6635-97 of 12 Aug 98 w/encl

1. At your request, the comments and recommendations in the case of PVT Lawrence Southerland is forwarded for your review. Enclosure (1) has been reviewed in accordance with reference (a), and is returned herewith.

2. Case History: Form[redacted] entered the United States Marine Corps on 28 January 1982, and was separated from the service on 12 April 1982. On 7 January 1982, he underwent his entrance examination at the Armed Force Entrance Examination Station (AFEES), and at that time he did not report any history of low back pain, low back problems or previous injury to his back. Based upon that examination he was found qualified for enlistment/ induction into the United States Marine Corps. His first documented screening examination was during his active duty service on 2 February 1982, when he underwent a recruit screening examination and was found fit for duty without any physical defects. He next presented to medical on 9 February 1982, on training day seven, where he reported a " back pain for 1 year". At that time, he had full range of motion of his back, no scoliosis, no anemia, and no erythema. He was given aspirin for pain and instructed to return to duty. He was next seen on 9 February 1982 in Podiatry Clinic where he reported foot pain on the inside of his right foot and outside of his left foot. He was diagnosed by the Podiatrist as having bilateral plantar fasciitis and given heel lifts and told return to the clinic as necessary. His next visit was 11 February 1982 (training day 9) where he reported, "kicked in the back last night, now with pain and spasms in low back without radiation" on the night previous. The patient was diagnosed with lumbar strain and given Parafon Forte and 48 hours of light duty. He was next seen on 12 February 1982, when he reported "low back pain better" and was neurologically intact. He was given Motrin and instructed to return to duty. He was next examined on 19 February 1982, where he was noted to have a sore throat and again, in the Podiatry Clinic where he noted to have "stress pain" bilaterally. On 5 March 1982, the patient presented with complaints of ankle pain and "sore back complains of spasms and tenderness in low back". He was noted to be neurologically intact and was given the assessment of musculoskeletal low back pain. His next exam was 12 March 1982, where he complained of "back pain for 1 year". The patient stated, "entire back is always in pain". He was noted to be neurologically intact without any deformities and was given Parafon Forte and Motrin. His next medical entry was 15 March 1982, where he was noted to

have low back pain and was to be neurologically intact. He was referred to Orthopaedics after being started on Flexeral and Indocin for pain. On 22 March 1982, he was then examined in the Cast Room Clinic, Orthopaedic Surgery Department, Naval Medical Center, San Diego. There the patient reported a history of "low back pain for 1 ½ to 2 years, exacerbated by physical training with parasthesia of both feet". His exam noted him to be neurologically intact and x-rays demonstrated a Grade I Spondylolisthesis of L-5/S-1. At this point, he was recommended for Administrative Separation for low back pain, which existed prior to enlistment and Grade I spondylolisthesis, which existed prior to enlistment. He could "follow-up as needed as a civilian". On 2 April 1982, his medial board was dictated. On 6 and 9 April 1982, the patient presented for pain medication refill and it was refilled. There were no further entries in to the members' military medical record.

His medical board diagnosed him with:

1) Back Pain, lower, (72450),EPTE and
2) Spondylolisthesis, (75612), EPTE.

A review of the supporting documentation provided reveals that the patient has had persistent low back pain and worsening left leg radicular pain since his separation from the service. This pain is to a point that he has been unable to perform any work and is "unemployable" according to the Department of Veterans Administration and is on 100% disability at this time. This documentation also provides multiple notes from specialists after his exit from the service. This documentation shows the patient to still have a Grade I spondylolisthesis and to be essentially neurologically intact with the exception of some radicular left leg pain/numbness. His x-rays show no other abnormalities including chest x-rays, AP pelvis, lateral sacral views. His laboratory findings including rheumatoid factor, white counts, uric acids and sedimentation rate are all normal. Further supporting documentation did provide a EMG/nerve conduction study date 5 November 1990, which shows chronic "mild" right L5/S1 and left L5/L4-5 nerve root irritation. A CT scan of the lumbosacral spine from 4 April 1985 revealed bulging disc at the L5/S1 interspace with impingement on the left and possibly right S1 nerve root and recommended a myelogram to confirm. The patient also underwent a bone scan of the lumbo-sacral spine on 1 March 1985, which revealed a normal symmetric uptake with an entirely normal study.

3. Summary and Recommendations: Examination of his medical record and supporting documents, shows the patient did, on several occasions, report a 1-2 year history of chronic low back pain. This was not only stated to corpsmen, on 9 February 1982 and 12 March 1982 but it was also stated to three Medical Officers (physicians) on 12 March 1982, 22 March 1982 and 2 April 1982. Based upon this, this would substantiate the diagnosis of chronic low back pain syndrome or lumbosacral strain or lumbar disc disorder, which existed prior to enlistment (EPTE). It is noted that after the patient was discharged from the service, his subsequent statements reflect that he did not have pain before his enlistment.

Further, the patient reports his secondary diagnosis of a Grade I spondylolisthesis was secondary to an injury while on active duty when he reported landing on either a knee or a boot during an exercise, he was forced to do during boot camp. Although spondylolisthesis can be caused by traumatic injury, it would be extremely unlikely for a patient, who was otherwise healthy, to sustain a bilateral pars intraarticularis fracture as a result from a fall from a standing height even on to a boot or knee. Typically, this fracture would require a fall from a height, at least greater than 10 feet, or a sudden deceleration injury, like from a car accident, or a violent forced hyperflexion injury, like a severe tackle to an interior lineman in football. Thus, the mechanism proposed by former [redacted] does not have merit. His spondylolisthesis is more likely the result of a congenital or developmental defect of his pars intraarticularis. Although his injury on active duty may have acutely exacerbated a chronic back condition for a brief period of time, it would be extremely improbably that this would result in any long-term disability as a direct result.

Therefore, based upon the record provided for my review, the petitioner's request for Medical Discharge from the United States Marine Corps verses an Administrative Separation does not appear to have merit. It is apparent, that the member did have the above noted conditions at the time of separation but the presence of these conditions in and of themselves does not necessarily warrant a medical separation.

4. If there are any further questions in this case, please do not hesitate to contact my office.

S. W. HELMERS
Lieutenant Commander, Medical Corps
United State Navy